IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12049 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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DHIRENDRABHAI NANJIBHAI MEHTA - Petitioner
Versus
PORBANDAR VIBHAGIYA NAGRIK SAHAKARI BANK LTD. & 1 - Respondents

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Appearance :

MR BH CHHATRAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 4, 6,
MS MANISHA SHAH, AGP for Respondent(s) : 2 - 3.
MR AS VAKIL for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/09/2006

ORAL JUDGMENT

1. The petitioner challenges an order (Annexure – A) dated 18.08.1989 passed by the District

Registrar, Junagadh, an order dated 15.01.1990 passed by the Additional Registrar (Appeals), Government of Gujarat and an order dated 08.08.1994 passed by the State Government.

The petitioner was a Director (as per the respondent - Managing Director) of respondent No.4 Mill Company. Workers of the Mill Company had borrowed some money from respondent No.1 – Cooperative Bank with an understanding that periodical deduction would be made from the salary of these workmen by the Mill Company and deposited with respondent No.1 towards repayment of dues of the workmen who were members of respondent No. 1 – Bank. Apparently, a sum of Rs.1,65,177/- was not deposited by the Mill Company with respondent No.1–Bank. Finding that the petitioner as well as respondent No.6 were jointly liable for non–depositing of the amount in question, proceedings under sub-section (3) of Section 50 of the Gujarat Cooperative Societies Act, 1961 (hereinafter to be referred as 'the said Act') came to be initiated against these persons. In response to the show cause notice issued by the District Registrar, though respondent No.6 remained present and apparently, admitted that sum of Rs.

1,65,177/-, though deducted from the salary of the workmen, was not deposited with respondent No.1 – Bank, the petitioner did not respond to the show cause notice. The District Registrar, therefore, found that in terms of provisions of sub-section (3) of Section 50 of the said Act, the petitioner, as Managing Director of the Mill Company, is personally responsible to pay the said amount to respondent No.1 – Bank. He, therefore, accordingly, directed that the amount in question be recovered from the personal properties of the petitioner.

2. The petitioner filed Revision Application before the Additional Registrar (Appeals) against the order passed by the District Registrar. The Revision Application came to be rejected by an order dated 15.01.1990. Further Revision Application filed before the State Government also came to be rejected on 08.08.1994. The petitioner has therefore, filed the present petition challenging the said orders passed by the authorities below.

3. Primarily, it is the contention of the learned Advocate for the petitioner that the petitioner was a Director of Public Limited Company.

He was, therefore, not an employer as envisaged in Section 50 of the said Act. In terms of sub-section (3) of Section 50 of the Act, the petitioner cannot be held personally liable to make good the loss.

4. On the other hand, Ms.Manisha Shah, learned Assistant Government Pleader, submitted that the petitioner was Managing Director of the Mill Company. Before the authorities it was admitted by Respondent No. 6 that entire amount though deducted from the salaries of the workmen, was not deposited with respondent No.1–Bank.

5. Mr. Vakil, learned Advocate for respondent No. 5- State Bank of Saurashtra opposed the petition.

6. Mr. Shukla, learned Advocate for the petitioner placed reliance on additional material produced by the petitioner in further affidavit dated 21.12.1994 along with which several documents are sought to be placed on record.

I find that the petitioner had not participated before the District Registrar in response to the show cause notice issued. These

documents were also not produced before the authorities.

Prima facie, though the petitioner may be justified in contending that it was a Mill Company, which was the employer of the concerned Bank and therefore, personal liability of the petitioner under sub-Section (3) of Section 50 would not arise, I find that there are certain factual aspects which are needed to be verified before any conclusion in this regard can be reached.

If the petitioner had in any manner given personal guarantee or undertaking for refund of the money borrowed by the workman or if it was found that he was directly responsible for diverting the amount though recovered from the workman, a different view may be possible. Without concluding these issues, suffice it to say that the evidence which the petitioner wishes to rely upon, was not before the authorities and it would not be appropriate for this Court to take the same into consideration.

7. Considering all these aspects of the matter, I find that the issues are required to be adjudicated

afresh by the District Registrar after permitting the petitioner to produce additional material on record, if he so desires. Since the petitioner had not participated before the District Registrar at the outset, this cannot be unconditional. The petitioner shall bear the costs of this litigation. Under the circumstances, the proceedings are remanded to the District Registrar for fresh consideration after permitting all sides to lead further evidence as may be desired. For the above purpose, the impugned orders at Annexures – A, B and C are quashed. Rule is made absolute to the above extent. The petitioner shall pay cost of Rs. 15,000/- (Rupees Fifteen Thousand only) to be appropriated equally by respondent Nos.1,2 and 5.

[AKIL KURESHI, J.]

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